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The Problem with Sections 18 and 21 of the ACL and Risk Allocation in Construction Contracts – *Martin Scott KC*

Section 18 of the *Australian Consumer Law* (misleading and deceptive conduct) can displace fundamental and well understood risk allocations made in construction contracts. Section 21 (unconscionable conduct) is emerging as an equal if not more potent weapon in the armoury of contractors. Both provisions potentially undermine the finality of contracts and create uncertainty of outcome at considerable cost. They create risk where parties have negotiated to reduce it. This article questions the utility of these provisions in a sophisticated commercial context given how the common law has progressively addressed risk allocation in construction contracts for 150 years. 7

Contract Works Insurance: Contractor Self-insured Retentions and the Impact of Aggregation – *Patrick Mead*

Contract Works and Construction All Risks policies of insurance comprise a critical component of risk allocation under modern construction contracts, particularly major projects. These policies invariably provide that an insured contractor should bear a specified part of each loss. This is achieved through the mechanism of self-insured retentions or deductibles. Such provisions can work to the serious disadvantage of the contractor when several separate incidents of damage all flow from one underlying cause. The purpose of aggregation provisions is to avoid that consequence. 18

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